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EXAMINER
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BOYCE, ANDRE D

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3623

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/806,204  
Filing Date: March 22, 2004  
Appellant(s): SELBY, DAVID A.

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Mark D. Simpson  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/25/10 appealing from the Office action mailed 6/22/10.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application: 1-24

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

US 2007/0055570

Martin

March 8, 2007

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 7-12, 15-20, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin (US 2007/0055570).

As per claim 1, Martin discloses a method for selecting an optimal set of events to be performed, where each event has a value and where the selection of any event reduces or leaves unchanged the value of unselected events (i.e., analysis of prioritized lists, ¶¶ 0005-0007), comprising: performing a first sort on all unselected events to form a pending event list, so that the events are ordered sequentially by their values, with the highest-valued event being at the top of the pending event list (i.e., prioritized list, ¶ 0004); selecting the highest-valued unselected event upon the occurrence of a predetermined trigger (i.e., organization determines that a specific set of segment of customers buy more than average customers and are given higher priority in the prioritized list, ¶ 0006); recomputing the values of each event after the selection of the highest-valued unselected event (i.e., sales promotional effort is measured, enabling an analyst to revise the prioritized list based upon the measurement, ¶¶ 0061-62); and moving the highest-valued unselected event, after performance of the recomputing step, to the top of the pending event list without performing a second sort of the entire pending event list (i.e., measurement of results by segment can be used to adjust the prioritization of the customers. If customers in one segment provide higher promotional response, these customers can be given an upward adjustment in the targeting priority, ¶ 0071).

As per claim 2, Martin discloses the selecting, recomputing, and moving steps are iteratively performed until the occurrence of a predetermined condition (i.e., adjustments based on three measured response, e.g., change in sales, change in selling activity and change in sales instructions, ¶¶ 0062-63).

As per claim 3, Martin discloses said predetermined condition comprises the selection of a predetermined number of events (i.e., measurement of results by segment used to adjust the prioritization, ¶ 0071).

As per claim 4, Martin discloses each event has a cost associated with its selection, whereby said predetermined condition comprises the reaching of a predetermined cost total for said selected events (i.e., cost per contact, ¶ 0105).

As per claim 7, Martin discloses each events expected gain (i.e., change in sales of the customer, ¶ 0063).

As per claim 8, Martin discloses said recomputing process comprises performing a saturation process on said unselected events (i.e., doubling the average number of contacts to medium priority customers to coincide with high priority customers, ¶ 0072).

Claims 9-12, 15 and 16 are rejected based upon the same rationale as the rejections of claims 1-4, 7 and 8, respectively, since they are the system claims corresponding to the method claims.

Claims 17-20, 23 and 24 are rejected based upon the same rationale as the rejections of claims 1-4, 7 and 8, respectively, since they are the computer program product claims corresponding to the method claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3623

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 13, 14, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2007/0055570).

As per claim 5, Martin does not disclose the performance of a truncated bubble sort on the events based on their recomputed values. However, the Examiner takes Official Notice that truncated bubble sorts are old and well known, and it would have been obvious to one of ordinary skill in the art to include performance of a truncated bubble sort in the system of Martin, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 6, Martin does not disclose the performance of a binary chop sorting process on the events based on their recomputed values. However, the Examiner takes Official Notice that binary chop sorting is old and well known, and it would have been obvious to one of ordinary skill in the art to include performance of a binary chop sorting process in the system of Martin, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 13 and 14 are rejected based upon the same rationale as the rejections of claims 5 and 6, respectively, since they are the system claims corresponding to the method claims.

Claims 21 and 22 are rejected based upon the same rationale as the rejections of claims 5 and 6, respectively, since they are the computer program product claims corresponding to the method claims.

#### **(10) Response to Argument**

In the Appeal Brief, Appellant argues 1) while Martin does describe changing the order of a promotional list, nothing in Martin teaches, or even remotely suggests, the claimed aspect of moving the highest valued unselected event to the top of the pending event list without performing a second sort of the entire pending event list, which as Applicant indicates, can be performed using a bubble or lazy sort.

With respect argument 1, the Examiner respectfully disagrees. Martin discloses measurement of results by segment can be used to adjust the prioritization of the customers. If customers in one segment provide higher promotional response, these customers can be given an upward adjustment in the targeting priority (§ 0071). As such, and contrary to Appellant's assertion, a second sort is not completed, while adjusting the higher promotional response customers in priority. As a result, Martin indeed teaches moving the highest-valued unselected event, after performance of the recomputing step, to the top of the pending event list without performing a second sort of the entire pending event list.



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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andre Boyce/

Primary Examiner, Art Unit 3623

Conferees:

Vincent Millin

/vm/

Appeals Conference Specialist

Beth Boswell /bvb/

Supervisory Patent Examiner, Art Unit 3623